

AMENDED IN ASSEMBLY MAY 1, 2012
AMENDED IN ASSEMBLY MARCH 29, 2012
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1444

Introduced by Assembly Member Feuer

January 4, 2012

An act to amend, *repeal, and add* Section 21167.6 of, ~~and to add Sections 21167.6.2 and Section 21167.6.3 to, and to add and repeal Section 21167.6.2 of,~~ the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 1444, as amended, Feuer. Environmental quality: record of proceedings.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA establishes a procedure for the preparation and certification of the record of proceedings upon the filing of an action or proceeding challenging a lead agency's action on the grounds of noncompliance with CEQA.

This bill would require, *until January 1, 2016*, the lead agency, at the request of a project applicant and the agreement of the project applicant to bear the costs incurred by the lead agency, to, among other things, prepare a record of proceedings concurrently with the preparation, and adoption or certification, of an environmental document. Because the bill would require a lead agency to prepare the record of proceedings as provided, this bill would impose a state-mandated local program. In an action or proceeding filed challenging the lead agency's action pursuant to CEQA, the bill would require the court to schedule a hearing within 30 days of the filing of the statement of issues regarding the record of proceedings.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21167.6 of the Public Resources Code
2 is amended to read:
3 21167.6. Notwithstanding any other law, in all actions or
4 proceedings brought pursuant to Section 21167, except as provided
5 for in Section 21167.6.2 or those involving the Public Utilities
6 Commission, all of the following shall apply:
7 (a) At the time that the action or proceeding is filed, the plaintiff
8 or petitioner shall file a request that the respondent public agency
9 prepare the record of proceedings relating to the subject of the
10 action or proceeding. The request, together with the complaint or
11 petition, shall be served personally upon the public agency not
12 later than 10 business days from the date that the action or
13 proceeding was filed.
14 (b) (1) The public agency shall prepare and certify the record
15 of proceedings not later than 60 days from the date that the request
16 specified in subdivision (a) was served upon the public agency.
17 Upon certification, the public agency shall lodge a copy of the
18 record of proceedings with the court and shall serve on the parties
19 notice that the record of proceedings has been certified and lodged

1 with the court. The parties shall pay any reasonable costs or fees
2 imposed for the preparation of the record of proceedings in
3 conformance with any law or rule of court.

4 (2) The plaintiff or petitioner may elect to prepare the record
5 of proceedings or the parties may agree to an alternative method
6 of preparation of the record of proceedings, subject to certification
7 of its accuracy by the public agency, within the time limit specified
8 in this subdivision.

9 (c) The time limit established by subdivision (b) may be
10 extended only upon the stipulation of all parties who have been
11 properly served in the action or proceeding or upon order of the
12 court. Extensions shall be liberally granted by the court when the
13 size of the record of proceedings renders infeasible compliance
14 with that time limit. There is no limit on the number of extensions
15 that may be granted by the court, but no single extension shall
16 exceed 60 days unless the court determines that a longer extension
17 is in the public interest.

18 (d) If the public agency fails to prepare and certify the record
19 within the time limit established in paragraph (1) of subdivision
20 (b), or any continuances of that time limit, the plaintiff or petitioner
21 may move for sanctions, and the court may, upon that motion,
22 grant appropriate sanctions.

23 (e) The record of proceedings shall include, but is not limited
24 to, all of the following items:

25 (1) All project application materials.

26 (2) All staff reports and related documents prepared by the
27 respondent public agency with respect to its compliance with the
28 substantive and procedural requirements of this division and with
29 respect to the action on the project.

30 (3) All staff reports and related documents prepared by the
31 respondent public agency and written testimony or documents
32 submitted by any person relevant to any findings or statement of
33 overriding considerations adopted by the respondent agency
34 pursuant to this division.

35 (4) Any transcript or minutes of the proceedings at which the
36 decisionmaking body of the respondent public agency heard
37 testimony on, or considered any environmental document on, the
38 project, and any transcript or minutes of proceedings before any
39 advisory body to the respondent public agency that were presented

1 to the decisionmaking body prior to action on the environmental
2 documents or on the project.

3 (5) All notices issued by the respondent public agency to comply
4 with this division or with any other law governing the processing
5 and approval of the project.

6 (6) All written comments received in response to, or in
7 connection with, environmental documents prepared for the project,
8 including responses to the notice of preparation.

9 (7) All written evidence or correspondence submitted to, or
10 transferred from, the respondent public agency with respect to
11 compliance with this division or with respect to the project.

12 (8) Any proposed decisions or findings submitted to the
13 decisionmaking body of the respondent public agency by its staff,
14 or the project proponent, project opponents, or other persons.

15 (9) The documentation of the final public agency decision,
16 including the final environmental impact report, mitigated negative
17 declaration, or negative declaration, and all documents, in addition
18 to those referenced in paragraph (3), cited or relied on in the
19 findings or in a statement of overriding considerations adopted
20 pursuant to this division.

21 (10) Any other written materials relevant to the respondent
22 public agency's compliance with this division or to its decision on
23 the merits of the project, including the initial study, any drafts of
24 any environmental document, or portions thereof, that have been
25 released for public review, and copies of studies or other documents
26 relied upon in any environmental document prepared for the project
27 and either made available to the public during the public review
28 period or included in the respondent public agency's files on the
29 project, and all internal agency communications, including staff
30 notes and memoranda related to the project or to compliance with
31 this division.

32 (11) The full written record before any inferior administrative
33 decisionmaking body whose decision was appealed to a superior
34 administrative decisionmaking body prior to the filing of litigation.

35 (f) In preparing the record of proceedings, the party preparing
36 the record shall strive to do so at reasonable cost in light of the
37 scope of the record.

38 (g) The clerk of the superior court shall prepare and certify the
39 clerk's transcript on appeal not later than 60 days from the date
40 that the notice designating the papers or records to be included in

1 the clerk's transcript was filed with the superior court, if the party
2 or parties pay any costs or fees for the preparation of the clerk's
3 transcript imposed in conformance with any law or rules of court.
4 Nothing in this subdivision precludes an election to proceed by
5 appendix, as provided in Rule 8.124 of the California Rules of
6 Court.

7 (h) Extensions of the period for the filing of any brief on appeal
8 may be allowed only by stipulation of the parties or by order of
9 the court for good cause shown. Extensions for the filing of a brief
10 on appeal shall be limited to one 30-day extension for the
11 preparation of an opening brief, and one 30-day extension for the
12 preparation of a responding brief, except that the court may grant
13 a longer extension or additional extensions if it determines that
14 there is a substantial likelihood of settlement that would avoid the
15 necessity of completing the appeal.

16 (i) At the completion of the filing of briefs on appeal, the
17 appellant shall notify the court of the completion of the filing of
18 briefs, whereupon the clerk of the reviewing court shall set the
19 appeal for hearing on the first available calendar date.

20 (j) *This section shall remain in effect only until January 1, 2016,*
21 *and as of that date is repealed, unless a later enacted statute, that*
22 *is enacted before January 1, 2016, deletes or extends that date.*

23 SEC. 2. *Section 21167.6 is added to the Public Resources Code,*
24 *to read:*

25 21167.6. *Notwithstanding any other law, in all actions or*
26 *proceedings brought pursuant to Section 21167, except those*
27 *involving the Public Utilities Commission, all of the following*
28 *shall apply:*

29 (a) *At the time that the action or proceeding is filed, the plaintiff*
30 *or petitioner shall file a request that the respondent public agency*
31 *prepare the record of proceedings relating to the subject of the*
32 *action or proceeding. The request, together with the complaint or*
33 *petition, shall be served personally upon the public agency not*
34 *later than 10 business days from the date that the action or*
35 *proceeding was filed.*

36 (b) (1) *The public agency shall prepare and certify the record*
37 *of proceedings not later than 60 days from the date that the request*
38 *specified in subdivision (a) was served upon the public agency.*
39 *Upon certification, the public agency shall lodge a copy of the*
40 *record of proceedings with the court and shall serve on the parties*

1 notice that the record of proceedings has been certified and lodged
2 with the court. The parties shall pay any reasonable costs or fees
3 imposed for the preparation of the record of proceedings in
4 conformance with any law or rule of court.

5 (2) The plaintiff or petitioner may elect to prepare the record
6 of proceedings or the parties may agree to an alternative method
7 of preparation of the record of proceedings, subject to certification
8 of its accuracy by the public agency, within the time limit specified
9 in this subdivision.

10 (c) The time limit established by subdivision (b) may be extended
11 only upon the stipulation of all parties who have been properly
12 served in the action or proceeding or upon order of the court.
13 Extensions shall be liberally granted by the court when the size of
14 the record of proceedings renders infeasible compliance with that
15 time limit. There is no limit on the number of extensions that may
16 be granted by the court, but no single extension shall exceed 60
17 days unless the court determines that a longer extension is in the
18 public interest.

19 (d) If the public agency fails to prepare and certify the record
20 within the time limit established in paragraph (1) of subdivision
21 (b), or any continuances of that time limit, the plaintiff or petitioner
22 may move for sanctions, and the court may, upon that motion,
23 grant appropriate sanctions.

24 (e) The record of proceedings shall include, but is not limited
25 to, all of the following items:

26 (1) All project application materials.

27 (2) All staff reports and related documents prepared by the
28 respondent public agency with respect to its compliance with the
29 substantive and procedural requirements of this division and with
30 respect to the action on the project.

31 (3) All staff reports and related documents prepared by the
32 respondent public agency and written testimony or documents
33 submitted by any person relevant to any findings or statement of
34 overriding considerations adopted by the respondent agency
35 pursuant to this division.

36 (4) Any transcript or minutes of the proceedings at which the
37 decisionmaking body of the respondent public agency heard
38 testimony on, or considered any environmental document on, the
39 project, and any transcript or minutes of proceedings before any
40 advisory body to the respondent public agency that were presented

1 *to the decisionmaking body prior to action on the environmental*
2 *documents or on the project.*

3 *(5) All notices issued by the respondent public agency to comply*
4 *with this division or with any other law governing the processing*
5 *and approval of the project.*

6 *(6) All written comments received in response to, or in*
7 *connection with, environmental documents prepared for the*
8 *project, including responses to the notice of preparation.*

9 *(7) All written evidence or correspondence submitted to, or*
10 *transferred from, the respondent public agency with respect to*
11 *compliance with this division or with respect to the project.*

12 *(8) Any proposed decisions or findings submitted to the*
13 *decisionmaking body of the respondent public agency by its staff,*
14 *or the project proponent, project opponents, or other persons.*

15 *(9) The documentation of the final public agency decision,*
16 *including the final environmental impact report, mitigated negative*
17 *declaration, or negative declaration, and all documents, in addition*
18 *to those referenced in paragraph (3), cited or relied on in the*
19 *findings or in a statement of overriding considerations adopted*
20 *pursuant to this division.*

21 *(10) Any other written materials relevant to the respondent*
22 *public agency's compliance with this division or to its decision on*
23 *the merits of the project, including the initial study, any drafts of*
24 *any environmental document, or portions thereof, that have been*
25 *released for public review, and copies of studies or other*
26 *documents relied upon in any environmental document prepared*
27 *for the project and either made available to the public during the*
28 *public review period or included in the respondent public agency's*
29 *files on the project, and all internal agency communications,*
30 *including staff notes and memoranda related to the project or to*
31 *compliance with this division.*

32 *(11) The full written record before any inferior administrative*
33 *decisionmaking body whose decision was appealed to a superior*
34 *administrative decisionmaking body prior to the filing of litigation.*

35 *(f) In preparing the record of proceedings, the party preparing*
36 *the record shall strive to do so at reasonable cost in light of the*
37 *scope of the record.*

38 *(g) The clerk of the superior court shall prepare and certify the*
39 *clerk's transcript on appeal not later than 60 days from the date*
40 *that the notice designating the papers or records to be included*

1 *in the clerk's transcript was filed with the superior court, if the*
2 *party or parties pay any costs or fees for the preparation of the*
3 *clerk's transcript imposed in conformance with any law or rules*
4 *of court. Nothing in this subdivision precludes an election to*
5 *proceed by appendix, as provided in Rule 8.124 of the California*
6 *Rules of Court.*

7 *(h) Extensions of the period for the filing of any brief on appeal*
8 *may be allowed only by stipulation of the parties or by order of*
9 *the court for good cause shown. Extensions for the filing of a brief*
10 *on appeal shall be limited to one 30-day extension for the*
11 *preparation of an opening brief, and one 30-day extension for the*
12 *preparation of a responding brief, except that the court may grant*
13 *a longer extension or additional extensions if it determines that*
14 *there is a substantial likelihood of settlement that would avoid the*
15 *necessity of completing the appeal.*

16 *(i) At the completion of the filing of briefs on appeal, the*
17 *appellant shall notify the court of the completion of the filing of*
18 *briefs, whereupon the clerk of the reviewing court shall set the*
19 *appeal for hearing on the first available calendar date.*

20 *(j) This section shall become operative on January 1, 2016.*

21 **~~SEC. 2.~~**

22 **SEC. 3.** Section 21167.6.2 is added to the Public Resources
23 Code, to read:

24 21167.6.2. (a) Notwithstanding Section 21167.6, at the request
25 of the project applicant and the agreement of the project applicant
26 to bear the costs incurred pursuant to this section prior to the release
27 of a draft environmental document, the lead agency shall prepare
28 the record of proceedings in the following manner:

29 (1) The lead agency for the project shall prepare the record of
30 proceedings pursuant to this division concurrently with the
31 administrative process.

32 (2) All documents and other materials placed in the record of
33 proceedings shall be posted on, and be downloadable from, an
34 Internet Web site maintained by the lead agency commencing with
35 the date of the release of the draft environmental document.

36 (3) The lead agency shall make available to the public in a
37 readily accessible electronic format the draft environmental
38 document and all other documents submitted to, or relied on by,
39 the lead agency in the preparation of the draft environmental
40 document.

1 (4) A document prepared by the lead agency or submitted by
2 the project applicant after the date of the release of the draft
3 environmental document that is a part of the record of the
4 proceedings shall be made available to the public in a readily
5 accessible electronic format within five business days after the
6 document is released or received by the lead agency.

7 (5) The lead agency shall encourage written comments on the
8 project to be submitted in a readily accessible electronic format,
9 and shall make any comment available to the public in a readily
10 accessible electronic format within five days of its receipt.

11 (6) Within seven business days after the receipt of any comment
12 that is not in an electronic format, the lead agency shall convert
13 that comment into a readily accessible electronic format and make
14 it available to the public in that format.

15 (7) The lead agency shall maintain the contents of the record
16 of proceedings in chronological order based on the date received
17 by the lead agency and shall electronically paginate the record of
18 proceedings.

19 (b) The content of the record of proceedings shall be as specified
20 in subdivision (e) of Section 21167.6.

21 (c) The costs of preparing the record of proceedings pursuant
22 to this section are not recoverable costs pursuant to Section 1033
23 of the Code of Civil ~~Procedures~~ *Procedure*.

24 (d) (1) If an action or proceeding is brought pursuant to this
25 division seeking review of the decision of the lead agency, the lead
26 agency shall prepare and certify the record of proceedings and
27 lodge the record of proceedings on a digital video disc or
28 comparable electronic format with the court not later than five
29 days from the date that the complaint or petition was served upon
30 the lead agency.

31 (2) Concurrently with the certification and lodging of the record
32 of proceedings with a court, the lead agency shall serve on the
33 parties to the action or proceeding a notice that the record of
34 proceedings has been certified and lodged with the court.

35 (3) The record of proceedings shall be in a readily accessible
36 format.

37 (4) Upon a showing of good cause, the court may extend the
38 time for the certification and lodging of the record of proceedings.

1 (e) Any dispute regarding the record of proceedings shall be
2 resolved by the court in an action or proceeding brought pursuant
3 to Section 21167.

4 (f) *This section shall remain in effect only until January 1, 2016,*
5 *and as of that date is repealed, unless a later enacted statute, that*
6 *is enacted before January 1, 2016, deletes or extends that date.*

7 ~~SEC. 3.~~

8 SEC. 4. Section 21167.6.3 is added to the Public Resources
9 Code, to read:

10 21167.6.3. (a) Within 30 days of the filing of the statement of
11 issues by the respondents and real party in interest, the court shall
12 schedule a hearing at which the parties shall do both of the
13 following:

14 (1) Identify any objections to the record of proceedings.

15 (2) Agree upon a physical copy of those portions of the record
16 of proceedings that the parties intend to refer to in their briefs.

17 (b) This section does not preclude a party from referring to other
18 portions of the record of proceedings if an appendix is prepared
19 and lodged containing copies of all relevant portions of the record.

20 ~~SEC. 4.~~

21 SEC. 5. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 a local agency or school district has the authority to levy service
24 charges, fees, or assessments sufficient to pay for the program or
25 level of service mandated by this act, within the meaning of Section
26 17556 of the Government Code.